I. ASSAULTS

A. Considerations for determining compensability of workplace assaults claims “arising out of and in the course of employment”
   1. Was personal motivation or a work dispute involved in the assault?
   2. Did the aggressor swing the first blow?
   3. Was the assault by someone the victim knew?
   4. Did the assault arise out of a labor dispute?

B. Workplace Assaults: Personal Motivation
   1. **Martin v. J. Litchtman & Sons** – a lunch room dispute
   2. 42 NJ 81, 199 A.2d 241 (1964)
      a) Claim is compensable, even if subject of dispute is non-work related, but it was work relationship that created the relationship
      b) Claim is compensable if the strain between employees results from the enforced contact of employment and unjustified assault

C. The Aggressor Defense
   1. **Stewart v. Chrysler Corp.** – assault leads to fatality of Stewart
   2. 350 Mich. 596, 87 N.W. 2d 117 (1957)
      a) Work connection and the injury is not broken, if the employee strikes the first blow, and the nature of the fight had its origin in the conditions of work
      b) Difficulty surfaces if rules hold for non-compensation of injured aggressors when the injury rises out of conditions of employment
c) In Stewart v. Chrysler – defendant precipitated the fight, but Stewart (the decedent) struck the first blow. Striking the first blow is not the test to determine whether injury “arose out of employment.” The disagreement arose out of the employer’s work, and this is the evidence for a causal connection between employment and fatal injury.

D. Assault by Strangers

1. **White v. Atlantic City Press** – as delivery person, White is enroute to work, picks up hitchhikers who assault & rob him

2. 64 NJ 128, 313 A.2d 197 (1973)

   a) Pashman (Judge) – petitioner was employee and the coming and going rule does not preclude compensability...employee used vehicle for work upon leaving home

   (1) Bah v. Breeze Corp. – employee killed hitchhiker, Supreme Court (1948) award to widow, compensated on death arose out of and in course of employment. Decedent might have been killed regardless...that is the “risk of travel.”

   (2) Today’s Supreme Court reversed – hitchhiker pick-up was charitable action of the decedent and the risk was “self-imposed.”

   (3) Larson – incident foreseeability is immaterial in WC Law, remains with tort law

   b) Was the risk connected to or grow out of the employment and what did it have to do with fulfilling the contract service?
(1) Employer placed petitioner on the road, subjecting him to the hazard, holding the injuries “arose out of employment” and recovery is not fatal.

3. **Jordan v. Farmers State Bank** – hostage of bank president’s wife, ransom supported by V.P of bank and both shot. Are injuries compensable? Did they “arise out of and in course of employment?”

4. 791 S.W. 2d 1 (Mo. Ct. App. 1990)

   a) WC Law – compensable injuries must occur by accident and “arise out of and in the course of employment”

   b) WC Law – personal injuries arising out of and in the course of employment are not compensable, unless engage in or about premises where duties are performed or where services requires their presence as part of their service

(1) **Arising out of and in the course of** – must be met to be compensable

(2) **Arising out of** – injury must be a natural incident of employment. Must be a causal connection between duties being performed and the injury

(3) **In the course of** – injury happens in period of employment at a place where employee may expect to be, fulfilling employment duties or engage in incidental activities

(4) Deciding cases is a matter of principles applied and on the basis of the presented facts

   c) Case affirmed – claimants performed as trained, therefore fulfilling duties of employment and injuries were “in course of employment”
E. Assaults stemming from Labor Disputes

1. **MEO v. Commercial Can Corp.** – Superintendent amidst striking workers, on call 24/7, assaulted while leaving home for work

2. 80 NJ Super. 58, 192 A. 2d 854 (1963)
   
   a) Does off-duty assaulted worker, in confines of his home, fall within parameters of WC Act?
   
   b) Employer concedes the causal connection of injuries to “arise out of”, but disagree that injuries were “in course of employment” and not compensable

   (1) Older day views – assaults outside of working hours or away from place of employment were not compensable

   (2) Modern day views – reversed from days of old

   c) Meo’s assault had causal connection to and in the course of employment, as employer required him to be on clock 24/7, putting him at risk to nature of employment

References